

Invitation to Comment

Title	Civil Discovery: Deposition Subpoenas in Actions Pending Outside California (adopt Cal. Rules of Court, rule 3.1015)
Summary	<p>The Legislature recently passed the Interstate and International Depositions and Discovery Act, Assembly Bill 2193 ([Tran] Stats. 2008, ch. 231) The new statutory provisions do not become operative until January 1, 2010, but the bill inadvertently repealed the predecessor statute that authorized deposition subpoenas in actions pending outside the state, Code of Civil Procedure 2029.010, effective January 1, 2009. New rule 3.1015 has been adopted, effective March 13, 2009, to fill this unintended one-year gap in the law by authorizing such subpoenas. The rule incorporates the language of the predecessor statute into the Rules of Court, providing that courts and litigators may continue to act under that law until the new statute goes into effect.</p>
Source	Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair
Staff	Anne Ronan, Attorney, Office of the General Counsel, 415-865-8933, anne.ronan@jud.ca.gov
Discussion	<p>Assembly Bill 2193 adopts the Interstate and International Depositions and Discovery Act (the Act) to replace the prior statute that authorized issuance of California deposition subpoenas in actions pending outside the state, former Code of Civil Procedure section 2029.010. The new act clarifies the deponents for whom California subpoenas can be issued, provides a process for obtaining subpoenas, and provides a process for the resolution of disputes regarding discovery in actions pending outside the state. The Act provides that, except for a provision that the Judicial Council to develop certain forms before January 1, 2010, the new statute does not become operative until January 1, 2010.</p> <p>The California Law Revision Commission, which authored the bill, has informed the Administrative Office of the Courts that it inadvertently drafted the bill in such a way as to repeal the predecessor statute effective January 1, 2009. The legislative sponsor of the new law, Assembly Member Van Tran entered a letter into the <i>Assembly Daily Journal</i> on January 26, 2009, stating that the early repeal of Code of Civil Procedure section 2029.010 was inadvertent and that the author's intent was to leave the provisions of that statute in effect until the new statutes becomes operative in January 2010.</p>

Rule 3.1015, incorporating the provisions of the predecessor statute, was adopted by the Judicial Council on March 13, 2009, effective immediately, to fill the gap in the law for the current year. The rule will be repealed January 1, 2010, the date the Act goes into effect or at such earlier time as the Legislature determines otherwise. Comments are now sought to determine if there is any reason to amend the new rule.

This rule provides that all courts and litigants continue their reliance on the law as it existed before the enactment of AB 2193. The Civil and Small Claims Advisory Committee will propose the new deposition subpoenas and application forms with an effective date of January 1, 2010, the date on which the statutory scheme becomes operative. (Code Civ. Proc., § 2029.900). The proposed new forms will be circulated for public comment from April 17 through June 17 of this year.

The Judicial Council has the authority to adopt the proposed rule under article VI, section 6 of the California Constitution. The rule is not inconsistent with statute –currently there is no operative statute concerning issuance of subpoenas for depositions in proceedings outside California. Moreover, the rule is not inconsistent with legislative intent, in that there is no evidence in the legislative history that AB 2193 was intended to place a moratorium on California depositions in out of state cases during the current year. Rather, the legislative intent in passing the new law appears to have been only to clarify and expand the procedures regarding such depositions in future years.

Attachment

Rule 3.1015 of the California Rules of Court is adopted effective March 13, 2009,
to read:

Rule 3.1015. Discovery in action pending outside of California

Whenever any mandate, writ, letters rogatory, letter of request, or commission is issued out of any court of record in any other state, territory, or district of the United States, or in a foreign nation, or whenever, on notice or agreement, it is required to take the oral or written deposition of a natural person in California, the deponent may be compelled to appear and testify, and to produce documents and things, in the same manner and by the same process as may be employed for the purpose of taking testimony in actions pending in California.

This rule is repealed January 1, 2010, or at such earlier date as a state law concerning depositions in proceedings pending outside the state goes into effect.

Advisory Committee Comment

Assembly 2193 ([Trans] Stats. 2008, ch.231) establishes the Interstate and International Depositions and Discovery Act, which is intended to replace Code of Civil Procedure section 2029.010. A provision in the act directs the Judicial Council to prepare certain forms to implement the act, which provision became operative on January 1, 2009. The remainder of the act will not become operative until January 1, 2010. The legislation inadvertently repealed the predecessor statute, Code of Civil Procedure section 2029.010, effective January 1, 2009, a year earlier than intended. (See Assembly Daily Journal, January 26, 2009, pp. 231-32.) This rule incorporates the text of that predecessor statute to fill the gap left by its unintended early repeal, thus providing that courts and litigants are to continue to act under the provisions of the prior law until the new provisions go into effect or until the Legislature should determine otherwise.

Item SP09-09 Response Form

Title: Civil Discovery: Deposition Subpoenas in Actions Pending Outside California
(adopt Cal. Rules of Court, rule 3.1015)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- ☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, April 17, 2009
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Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.